IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

Crl.Rev.Pet.No. 2862 of 2005()

CRA.581/2004 of SESSIONS COURT, KOZHIKODE
ST.248/2004 of SPECIAL JFCM(MARAD CASES), KOZHIKODE

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REVN. PETITIONER: APPELLANT/ACCUSED

SANDEEP P., S/O.K.P.MENON,
AGED 34 YEARS, CHIEF EXECUTIVE OFFICER,
E-COM COMPUSHOPE COM. LTD.,
CITY TOWERS, INDIRA GANDHI ROAD, KOZHIKODE.

BY ADV. SRI.V.V.NANDAGOPAL NAMBIAR
SRI.T.P.PRADEEP

RESPONDENTS:

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1. V.M.JITHESH,
S/O.MURALEEDHARAN
ASWATHI, 4-131, JAWAHAR NAGAR
ERANHIPALAM, KOZHIKODE

2. STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR
SRI.M.SHAJU PURUSHOTHAMAN
SRI.K.S.RAJESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 2862 OF 2005

Dated this the 1st day of October, 2007

O R D E R

In this Revision filed under Section 397 read with Sec. 401 Cr.P.C. the petitioner who was the accused in S.T. No.248/2004 on the file of the Special J.F.C.M.(Marad Cases), Kozhikode challenges the conviction entered and the sentence passed against him for an offence punishable under Sec. 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act').

2. I heard the learned counsel for the Revision Petitioner and the learned Public Prosecutor.

3. The learned counsel appearing for the Revision Petitioner re-iterated the contentions in support of the Revision. The courts below have concurrently held that the cheque in question was drawn by the revision petitioner in favour of the complainant on the drawee bank, that the cheque was validly presented to the bank, that it was dishonoured for reasons which fall under Section 138 of the Act, that the complainant made a demand for payment by a notice in time in accordance with clause

(b) of the proviso to Section 138 of the Act and that the Revision Petitioner/accused failed to make the payment within 15 days of receipt of the statutory notice. Both the courts have considered and rejected the defence set up by the revision petitioner while entering the above finding. The said finding has been recorded on an appreciation of the oral and documentary evidence. I do not find any error, illegality or impropriety in the finding so recorded concurrently by the courts below. The conviction was thus rightly entered against the petitioner.

4. What now survives for consideration is the question as to whether a proper sentence has been imposed on the Revision Petitioner. The learned counsel for the revision petitioner submitted that the entire compensation amount of Rs.3,45,000/- has been deposited by him before the trial court pursuant to the interim direction issued by this court. The learned counsel for the 2nd respondent complainant is unable to confirm or deny the said submission. If the said amount has been deposited before the trial court, then the same shall constitute compensatin under section 357(3) Cr.P.C. and in that event the revision petitioner need only undergo imprisonment till the rising of the court for which purpose

he shall appear before the trial court on 12.11.07. If the amount has not been deposited, the revision petitioner is given three weeks time to deposit the amount in which case also he shall undergo imprisonment till the rising of the court as ordered above. The sentence passed by the lower appellate court is modified to the above extent. It goes without saying that the 2nd respondent complainant is entitled to withdraw the sum of Rs.3,45,000/- to be deposited or already deposited as aforesaid.

This revision is disposed of as above.

(V. RAMKUMAR, JUDGE)

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